

Presidents, 8 of President Bush's first 11 nominations—made on May 9, 2001, almost a year ago—are still pending in committee without so much as a hearing! That's nearly 365 days, and only 3 of the President's first 11 nominees are confirmed. Is this what the Democratic leadership considers a record-breaking pace? It may be record-breaking, all right, but not the record they're talking about. They are confirming with the velocity of molasses.

Now I heard my colleague suggest that some of the first 11 nominees may have been superseded out of courtesy to Republican Senators who requested some later-nominated judges to move first. Well, I know how difficult it is to chair the committee, and such requests do come in. But I would suggest to my friend that he do what I did for President Clinton: consider more than one circuit nominee per hearing. That's what we did, under Republican leadership, no fewer than 10 times. Why not two at a time?

Of course, the pace of confirming a President's first 11 nominees is not the only measure by which the current leadership is falling short. My colleague suggested that kudos should be awarded for bringing the circuit court vacancy rate down to 29. Well, it was never that high at the end of any Congress when Republicans controlled the Senate. And I certainly don't recall that, during my chairmanship, any of our circuit courts were facing the kind of crisis that is going on today in the 6th Circuit Court of Appeals, where the court is operating at half-staff despite the fact that president Bush has nominated seven highly qualified people to serve on that court.

The fact is that, at the close of the 106th Congress, when I was chairman of the Judiciary Committee, there were only 67 vacancies in the federal judiciary. In the space of one Democratic-controlled congressional session last year, that number shot up to nearly 100, where it remains today. Under Republican leadership, the Senate confirmed essentially the same number of judges for President Clinton—377—as it did for President Reagan—382—which proves bipartisan fairness—especially when you consider that President Reagan had six years of his party controlling the Senate, and President Clinton had only two.

So how did we go from 67 vacancies at the end of the Clinton administration to nearly 100 today? There can be only one answer: The current pace of hearings and confirmations is simply not keeping up with the increase in vacancies. We are moving so slowly that we are barely keeping up with natural attrition. President Bush nominated 66 highly qualified individuals to fill judicial vacancies last year. But in the first 4 months of Democratic control of the Senate last year, only 6 Federal judges were confirmed. At several hearings, the Judiciary Committee considered only one or two judges at a time. The committee voted on only 6 of 29

circuit court nominees in 2001, a rate of 21 percent, leaving 23 of them without any action at all.

This leads to my second point, which is that the current situation has nothing whatsoever to do with ideology. I was surprised to hear my friend, the chairman of the Judiciary Committee, address earlier today the question of introducing ideology into the judicial confirmation process. Some of my Democrat colleagues have made no bones about the fact that this is exactly what they are seeking to do. In July, they have even held hearings expressly on how to justify it. We saw what happened to Judge Charles Pickering.

What is now occurring is far beyond the mere tug-of-war politics that unfortunately surrounds Senate judicial confirmation since Robert Bork. Some of my colleagues are out to effect a fundamental change in our constitutional system, as they were instructed to do by noted liberal law professors at a retreat early last year. Rather than seeking to determine the judiciousness of a nominee and whether a nominee will be able to rule on the law or the Constitution without personal bias, they want to guarantee that our judges all think in the same way, a way that is much further to the left of mainstream than most of President Bush's nominees.

In the judiciary that some would create, citizens will have to worry about the personal politics of the judge to whom they come for justice under the law. I strongly object to that result.

The legitimacy of our courts, and especially the Supreme Court, comes from much more than black robes and a high bench. It comes from the people's belief that judges and justices will apply a judicial philosophy without regard to personal politics or bias.

In conclusion, Madam President, it is time for this Senate to examine the real situation in the Judiciary Committee, rather than listen to more inventive ways of spinning it. We have lots of work to do. There are 90 vacancies in the federal judiciary—a vacancy rate of more than 10.5 percent—and we have 50 nominees pending, including 4 nominees for the Court of Federal Claims. Nineteen of the pending nominees are for circuit court positions, yet the Senate has confirmed only nine circuit judges this Congress. This is despite a crisis of 29 vacancies pending in the circuit courts nationwide—virtually the same number of vacancies pending when the Democrats took control of the Senate in June of last year.

Madam President, the American people are disappointed in this process. They want the Senate to help—not hinder—President Bush. I urge my friends across the aisle to focus on this situation, to step up the pace of hearings and votes, and to do what's right for the country.

Thank you, Madam President. I yield the floor.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having passed, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:43 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

## EXECUTIVE SESSION—Continued

### NOMINATION OF MICHAEL M. BAYLSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the first nomination.

The assistant legislative clerk read the nomination of Michael M. Baylson, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Michael M. Baylson, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Connecticut (Mr. DODD) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 98 Ex.]

## YEAS—98

Akaka	Crapo	Johnson
Allard	Daschle	Kennedy
Allen	Dayton	Kerry
Baucus	DeWine	Kohl
Bayh	Domenici	Kyl
Bennett	Dorgan	Landrieu
Biden	Durbin	Leahy
Bingaman	Edwards	Levin
Bond	Ensign	Lieberman
Boxer	Enzi	Lincoln
Breaux	Feingold	Lott
Brownback	Feinstein	Lugar
Bunning	Fitzgerald	McCain
Burns	Frist	McConnell
Byrd	Graham	Mikulski
Campbell	Gramm	Miller
Cantwell	Grassley	Murkowski
Carnahan	Gregg	Murray
Carper	Hagel	Nelson (FL)
Chafee	Harkin	Nelson (NE)
Cleland	Hatch	Nickles
Clinton	Hollings	Reed
Cochran	Hutchinson	Reid
Collins	Hutchison	Roberts
Conrad	Inhofe	Rockefeller
Corzine	Inouye	Santorum
Craig	Jeffords	Sarbanes